

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Revision of FCC Rules to)
Ensure Compatibility)
with Enhanced 911 Emergency)
Systems)

CC Docket No. 94-102

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COMMENTS OF CONSUMERS FIRST AND THE
AD HOC ALLIANCE FOR PUBLIC ACCESS TO 911

Consumers First and the Ad Hoc Alliance for Public Access to 911 (Alliance) present these comments on the Notice of Proposed Rulemaking (Notice) issued on October 19, 1994 in the above-captioned docket.

I. The Alliance

The Alliance is a collective of non-profit, safety concerns that have joined just for the purpose of presenting their shared views on the Notice. The members of the Alliance are Consumers First, Center for Public Interest Law, National Consumers League, Alliance for Technology Access, Consumer Action, Consumer Coalition of California, Toward Utility Rate Normalization (TURN), Utility Consumer Action Network (UCAN) and Crime Victims United. The Alliance members represent the views and interests of consumers, public interest groups and the general public.

II. Our Concerns

We applaud the Notice's proposals to improve the usefulness of the 911 service as a tool of public health and safety. Generally, we believe that the proposed enhancements to 911 services will provide health, safety and welfare dividends at a cost which, while not insubstantial, is not disproportionate. We also concur with

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the Commission's selection of the "broad availability of 911 service and enhanced 911 service..."¹ as the objective of this proceeding and the standard by which the results of the proceeding should be measured.

Our primary concern with the Notice is with the most fundamental aspect of that objective: that being 911 service is universally available and easy to access. Ironically, the Notice's proposals actually provide an excuse for the denial of 911 service to mobiletelephone users. Paragraph 41 of the Notice states that commercial mobile radio service (CMRS) providers would be required to provide 911 service access only to "service initialized" users and "subscribed-to" roamers. "Service initialized" users are defined as those who have a contract for service with the CMRS provider. We are concerned that cellular carriers, many of whom already block 911 calls from non-subscribers, may seize upon those limitations in the proposed 911 service rules to justify the blocking of 911 emergency assistance calls from non-subscribers. The Commission, if it desires to preserve 911 service benefits, should strike that language in paragraph 41 of the Notice and should do all within its powers to cause those who provide commercial access to the PSTN to offer unencumbered 911 service access.

We anticipate that cellular carriers will justify their behavior by pointing to the fact that the Commission has addressed 911 access requirements comprehensively and, because of the Federal

¹ Notice at 1, para. 1.

preemption of State regulation in this area,² exclusively, and that blocking non-subscribers meets with the requirements. Attempts by States to mandate 911 access for non-subscribers will be assailed. Carriers will argue that blocking non-subscribed access to 911 service is a trade-off accepted for the requirement to "enhance" their 911 services.

Our expectation of drastically increased blocking by cellular carriers of 911 access is not speculation, and is consistent with the Commission's experiences.³ The blocking of unsubscribed 911 access is a current practice. For example, Bell South's large cellular system blocks 911 access attempts by non-subscribers. As another example, cellular carriers are beginning to take steps which would make it virtually impossible for "roamers" to obtain 911 service. Cellular One, the nonwireline carrier in Washington, DC, has announced that it has ceased honoring its roaming agreement with the nonwireline carrier in the New York, NY MSA to deter theft of service.⁴ As a result Cellular One customers entering the New York, NY MSA can no longer just place a telephone call in that area without first establishing a separate service agreement with the New York, NY carrier. Such a sudden response to the service theft

² The Commission proposes to preempt State 911 services regulation because of the need for national uniformity in the provision and availability of 911 services. Notice at 29, para. 59.

³ The Notice (page 17, note 38) states that, "based on our experience," the Commission does not expect cellular carriers to voluntarily implement 911 enhanced service.

⁴ USA Today, page 2B, December 2, 1994.

problem might help reduce the extent of that problem, but only at the cost of functionally eliminating a roamer's access to 911 service. Consumers expect to be able to roam as a result of prior arrangements made on a carrier-to-carrier basis and will be shocked when suspensions of roaming arrangements disable their expected access to emergency 911 services.

The availability of 911 service is much more critical for the mobiletelephone user than the fixed telephone station user. The mobile caller is more likely to be in an area where he or she does not know the telephone numbers of the local police and municipal ambulance stations, and the mobile user generally will lack access to telephone directories that provide that information. The mobile caller also will tend to have less access to first aid equipment and materials and other means that would allow the caller to cure or ameliorate an emergency condition. Blocking 911 calls from mobiletelephones, for whatever reason, is a thoughtless, unwise and unacceptable practice which the Commission should not tolerate.

Using the rules proposed in the Notice to block 911 calls would not only place the FCC in a politically embarrassing position,⁵ it would produce a geographic patchwork of 911 availability and 911 unavailability that the consumer could not possibly comprehend. The consumer cannot be expected to know the

⁵ The FCC would be viewed by the public as an accessory to the powerful cellular interests in their quest to limit the availability of 911 service.

edge of the reliable signal strength contour of his or her "home" carrier's system or the geographic areas for which his or her "home" carrier has established carrier-to-carrier roaming agreements. No system of notification could possibly provide that information (which may change frequently) in a manner that will be understood by the consumer. The Notice recognizes that mobile callers frequently do not even know their location.⁶ Complexity and the 911 service do not mix. The Notice acknowledges that a simple three digit emergency access system was selected so that it would be effectively available to all people, "including children."⁷ The cellular services consumer could be of any age, any physical condition, any level of education and could have one or more mental or emotional infirmities. When that consumer uses 911 service, it is not unlikely that the consumer will be operating under an increased level of stress, which clouds judgment. It, thus, makes no sense to assume that the cellular services consumer will understand and appreciate that his or her cellular telephone will not function to summon help when that consumer is outside of the undefined areas for which he or she is an authorized user at the moment the 911 call is placed.

The problems stemming from limiting mandated 911 service access to those with whom the mobile carrier has a prior service agreement can only grow over time. The public has embarked on an ever accelerating transition to the use of telephones that are

⁶ Notice at 7, para. 10 and note 18.

⁷ Notice at 4, para. 4.

assigned to the user and not to a fixed station. This is such a salient trend that carriers have established the 500 access service for the nationwide assignment of telephone numbers to users.⁸ The Notice expresses the Commission's understanding of this trend by noting that there will be approximately 32 million cellular telephone subscribers by 1998.⁹ Because of this trend, there is increasing use of 911 service by cellular users.¹⁰ As this trend continues, major gaps in 911 service access through cellular carriers will have increasingly significant health and safety ramifications which could erode consumer confidence in the 911 service and threaten the viability of the service.

For those reasons, we do not believe that there are any feasible alternatives to the universal availability, without regard to prior service arrangements, of 911 access to cellular users. We encourage the Commission to issue a further notice of proposed rulemaking specifying rules requiring CMRS providers of 2-way, real-time voice service, or at least cellular service providers, to accept 911 service calls from any mobile unit, without regard to prior service arrangements.

We are mindful of the costs of mandated 911 service. But, we do not believe that mandating 911 service without regard to prior

⁸ 500 access service is discussed in the "Order" of the Common Carrier Bureau in The Ameritech Operating Companies, et al., released on November 30, 1994.

⁹ Page 7, para. 9.

¹⁰ Notice at 6, para. 9.

service contract presents a significant cost to cellular carriers.¹¹ The amount of 911 usage is not great. According to the Notice, there are 260,000 911 emergency calls per day. For a large and telephone dependent population such as our's, that number is not very significant.

There are also strong equities favoring our approach. A review of initial cellular authorization applications filed with the FCC shows that most of the authorized carriers promised free 911 access in exchange for their license. Indeed, it is little to ask of cellular carriers that they remove barriers to 911 access when one considers that the cellular carriers paid very little for their licenses.

Our approach to the problem would satisfy applicable law. The requirements of the Administrative Procedure Act would be met by the issuance of the further notice of proposed rulemaking describing our proposal.¹² The requirements of the Communications Act of 1934 also would be met. We see this proposal, from that perspective, to be no different from the 911 service enhancement proposals described in the Notice. Like those enhancement proposals, our proposal would advance the Commission's "purpose of promoting safety of life and property through the use of wire and

¹¹ The words "without regard to prior service contract" were chosen by us because we do not believe that the carrier should be barred from collecting its usual service charge from a foreign user of 911 service after the 911 call is completed.

¹² Section 553 of that law requires the publication of notice of proposed rules and affording the public the opportunity to comment on the proposed rules prior to their adoption. 5 USC 553.

radio."¹³ Similarly, our proposal is within the Commission's "jurisdiction to license the electromagnetic spectrum, and also to regulate 'instrumentalities, facilities [and] apparatus' through which wire and radio services are provided."¹⁴ Again, if promoting the "broad availability of 911 ... services" is sufficient to meet the requirements of the Communications Act,¹⁵ our proposal meets those requirements.

Finally, we believe that the FCC should require cellular phones to be able to lock on and access 911 service through the stronger of the two carrier's signals received by the phone. While cellular phones are capable of operating on all cellular channels, they are configured so that only the frequency block licensed to the "home" serving carrier can be accessed. Yet, when an emergency occurs, the signal of the nearest base station operating on the pre-set block of frequencies may be too weak to be useful. This is not an infrequent problem. Typically, cellular systems have coverage gaps in many places within their primary service area. Many cellular systems do not offer useful signal strength near the fringes of their geographic boundaries. But, while service gaps exist for both carriers in a market, the total area where there is

¹³ 47 USC 151. This purpose is cited in the Notice as the purpose that would be served by the proposed service enhancement rules.

¹⁴ Notice at 5, para. 7. The internal quote is taken from 47 USC 153.

¹⁵ The Notice (page 5, para. 7) cites this effect of the proposed rules as consistent with the purposes of the Communications Act.

not a clear signal from either carrier would tend to be much smaller than either carrier's own service gaps because each carrier uses a different configuration of base stations, channels, antenna systems and operating powers. Configuring the mobiletelephone to sample base station signal strength on both channel blocks and to send a 911 call to the carrier having the best signal would drastically reduce the unavailability of 911 service to mobile customers caused by coverage gaps thus promoting the FCC's goal of increasing 911 service access.

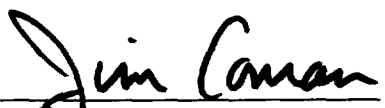
However, this proposal would not be feasible unless the Commission adopted our primary proposal to prohibit the blocking of 911 calls by cellular carriers.

III. Conclusion

We respectfully request the Commission to issue a further notice of proposed rulemaking mandating the provision of 911 service access without regard to prior service arrangements by CMRS providers offering real-time, two-way voice service. In addition, the Commission is requested to propose rules requiring cellular telephones to be able to access the stronger of the A or the B channel group signal when placing a 911 call.

Ad Hoc Alliance for Public
Access to 911

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